S.B.Civil Second Appeal No.273/2005.

Kamal Kumar.

vs.

Kandoi Charitable Trust, Nohar.

Date : 10.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. R Charan, for the appellant.
Mr. Arvind Srimali, for the respondent.

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Heard learned counsel for the parties.

The appellant/defendant is aggrieved against the judgment and decree of the trial court dated 2.8.1999 and dismissal of his appeal by the first appellate court vide judgment and decree dated 20.7.2004.

The plaintiff/respondent trust filed a suit for eviction of tenant/appellant on the ground of default in payment of rent. In the trial court, the rent was determined but the defendant did not deposit the determined arrears of rent nor has paid rent during the pendency of the suit and the defence of the appellant was struck off by the order of the trial court. After

evidence, the trial court decreed the plaintiff's suit and the appeal against said decree was also dismissed by the first appellate court. Hence, this second appeal.

Learned counsel for the appellant submits that the plaintiff is public trust and the plaintiff trust is not registered under the provisions of Rajasthan Public Trust Act and, therefore, the suit of the plaintiff was not maintainable. However, this point was not raised as such in the written statement and, therefore, no specific issue was framed with respect to the registration of the plaintiff's trust. The appellant also raised this ground in first appeal which was rejected by the first appellate court.

According to learned counsel for the appellant, as per the mandatory provision i.e. Section 29 of the Rajasthan Public Trust Act, no suit to enforce the rights on behalf of unregistered trust is maintainable and, therefore, the two courts below committed error of law in decreeing the suit of the plaintiff.

I considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below.

The plaintiff trust was registered or not is a

pure question of fact and in the written statement particularly, in para no.16, no such plea has been taken by the defendant that the plaintiff trust is not a registered trust. The appellant's contention is that the plaintiff is not owner of the property in dispute. The property is situated on a part of road which was encroached obviously by the plaintiff and the premises were constructed. In view of the above, the question which has been sought to be agitated as a question of law is question of fact and that is whether the plaintiff trust is a registered trust or not ? For which, the appellant did not took any plea in the written statement and, therefore, I do not find that the said question is involved in this appeal.

In view of the above, no substantial question of law is involved in this appeal. Consequently, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya